IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

COMPANY PETITION NO.853 OF 2000

The Small Industries Development Bank of India ..Petitioner.

Vs.

Alpic Finance Limited ..Respondent.

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Ms. J.M. Sidhwa i/b Pandya Gandhi & Co. for the Petitioner.
Mr. A.W. Ansari for the Respondent.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

21st June, 2007.

P.C. :

1. The Petitioner sanctioned and released five term loans to the Respondent. The first term loan was sanctioned for an amount of Rs.250 lacs on 8th July, 1993. All the dues under the first term loan were paid by the Respondent Company on 21st September, 1998. Further term loans were also sanctioned. These included a term loan in the amount of Rs.10 Crores sanctioned on 21st February, 1994; in the amount of Rs. 2 Crores sanctioned on 26th October, 1995; in the amount of Rs. 15 Crores sanctioned on 29th February, 1996 and in the amount of Rs.10 Crores sanctioned on 31st December, 1997. In respect of the aforesaid term loans in the

amount of Rs.37 Crores, the Respondent has executed deeds of hypothecation by which an exclusive charge on all the movables, plants, machinery and equipment and other assets acquired or proposed to be acquired out of the loan has been created in favour of the Petitioner. The Deeds of hypothecation were executed respectively on 8th March, 1994, 9th November, 1995, 6th March, 1996 and 5th January, 1998 and have been modified from time to time.

2. At the stage of admission a conditional order was passed by this Court on 16th April, 2001 by which a detailed time schedule was indicated for the repayment of the debt due and payable to the Petitioner by the Respondent. There has been a default on the part of the Respondent in complying with the directions prescribed in the order of the Court. There is no substantive defence forthcoming at the hearing of the Petition save and except for the statement that the company was suffering from adverse financial conditions and was unable to pay its debt due. The narration of facts before the Court is sufficient to lead to an inference that the company is unable to pay its debts within the meaning of Section 433(e) of the Companies Act, 1956. The Company Petition is

accordingly made absolute in terms of prayer clauses (a) and (b). The Official Liquidator who has already been appointed as the Provisional Liquidator shall in the circumstances, now act as Liquidator for the purposes of and in relation to the winding up of the company in accordance with the provisions of the Companies Act, 1956.